

September 22, 2006

IA-06-036

Gary Abel

**[Home address removed from copies
pursuant to 10 CFR 2.390]**

SUBJECT: COMMITMENTS TO BE CONFIRMED BY ORDER (EFFECTIVE
IMMEDIATELY)
(NRC OFFICE OF INVESTIGATION REPORT No. 4-2005-007)

Dear Mr. Abel:

The enclosed Confirmatory Order is being issued to you as part of a settlement agreement between you and the Nuclear Regulatory Commission (NRC) regarding apparent violations of the NRC's deliberate misconduct rule identified during the subject investigation. By letter dated March 21, 2006, the NRC identified an apparent violation of 10 CFR 30.10 involving your apparent deliberate improper handling of a document containing Safeguards Information-Modified Handling (SGI-M) and your apparent deliberate failure to provide complete and accurate information to the NRC. Specific handling requirements for SGI-M are contained in the NRC's June 6, 2003, Order Imposing Compensatory Measures for Panoramic and Underwater Irradiator Licensees.

Our March 21, 2006, letter offered you a choice of attending a predecisional enforcement conference or requesting Alternative Dispute Resolution (ADR) in an attempt to resolve any disagreements between you and the NRC. You requested ADR to resolve this matter with the NRC. ADR is a general term encompassing various techniques for resolving conflicts outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation.

On August 4, 2006, an ADR mediation session was held between you and the NRC. Based on that session, you and the NRC reached a settlement agreement in principle. In summary, you agreed that you engaged in deliberate misconduct when you faxed a document that contained SGI-M information over unprotected telecommunications circuits, which was prohibited by the June 6, 2003, Order Imposing Compensatory Measures for Panoramic and Underwater Irradiator Licensees. You did not agree that you deliberately provided information that was inaccurate and incomplete to the NRC. Based on its investigation, the NRC disagreed with you on this second point. However, the actions in the attached Confirmatory Order are sufficient to address the NRC's concerns.

We note that, pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Confirmatory Order should be addressed to Mr. Michael Vasquez, NRC Region IV at 817-860-8121 or Mr. Michael Burrell, Office of Enforcement, who can be reached at 301-415-2740.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

This letter will be maintained by the Office of Enforcement (OE) in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Sincerely,

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Enclosure: As Stated

cc:

Mr. James Streicker
Mr. Terence Campbell
Cotsirilos, Tighe & Streicker, Ltd
33 North Dearborn Street, Suite 600
Chicago, Illinois 60602

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Mr. Gary Abel

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IA-06-036

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Mr. Gary Abel is a former General Manager of the Sterigenics International Inc., (Sterigenics) facility in Tustin, California.

II

An NRC inspection was conducted at Sterigenics' facility in Tustin, California on October 18-19, 2004, to review compliance with the NRC's June 6, 2003, Order Imposing Compensatory Measures (Order) for Panoramic and Underwater Irradiator Licensees. Following that inspection, an investigation was initiated by the NRC Office of Investigations (OI) in order to determine whether Mr. Abel, who was the General Manager of the facility at the time, engaged in deliberate misconduct. Based on the results of the NRC inspection and investigation, the NRC identified that Mr. Abel acted in apparent violation of 10 CFR 30.10, "Deliberate misconduct." 10 CFR 30.10 states, in part, that any employee of a licensee may not:

(1) engage in deliberate misconduct that causes a licensee to be in violation of any order issued by the Commission; or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Attachment 3 of the NRC's June 6, 2003 Order requires certain specific handling requirements for documents containing Safeguards Information-Modified Handling (SGI-M).

Based on the inspection and investigation, the NRC was concerned that between December 2003 and April 2004, Mr. Abel engaged in deliberate misconduct when he faxed, over unprotected telecommunications circuits, a document containing SGI-M, when he knew this was prohibited by the Order. This act caused the licensee to be in violation of the June 6, 2003, Order. In addition, the NRC was concerned that Mr. Abel submitted to the NRC information that he knew was incomplete or inaccurate regarding some of the circumstances relating to the faxed document.

III

In a letter dated March 21, 2006, the NRC identified to Mr. Abel an apparent violation of 10 CFR 30.10, and offered Mr. Abel the opportunity to either request a predecisional enforcement conference or request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether a violation occurred and if a violation did in fact occur, the appropriate enforcement sanction. In response to the March 21, 2006 letter, Mr. Abel requested ADR to resolve the matter with the NRC. ADR is a process in which a neutral mediator with no decision-making authority assists the NRC and Mr. Abel to resolve any differences regarding the matter.

An ADR session was held between Mr. Abel and the NRC in Lisle, Illinois, on August 4, 2006. During that ADR session, an agreement was reached. The elements of the agreement consisted of the following:

1. The NRC and Mr. Abel agree that a violation of 10 CFR 30.10 occurred. Specifically, 10 CFR 30.10 prohibits, in part, any licensee or licensee employee from engaging in deliberate misconduct that causes a licensee to be in violation of any rule or Order issued by the Commission. Mr. Abel agrees that he deliberately faxed a document containing SGI-M information over unprotected telecommunications circuits to a security contractor in violation of the NRC's June 6, 2003, Order Imposing Compensatory Measures (Order) for Panoramic and Underwater Irradiator Licensees. This caused Mr. Abel's former employer to be in violation of the Order.
2. Mr. Abel does not agree that he violated 10 CFR 30.10 by deliberately providing information that was inaccurate and incomplete to the NRC. The NRC and Mr. Abel agree to disagree regarding this point.
3. The NRC and Mr. Abel agree that the actions in this paragraph are sufficient to address the NRC's concerns. Mr. Abel agrees to issuance of a letter and Confirmatory Order confirming this agreement, and also agrees to waive any request for a hearing regarding this Confirmatory Order. The Confirmatory Order would include the following elements:

- A. Mr. Abel will not engage in future NRC or Agreement State licensed activities for a period of 1 year to begin on the date of this Confirmatory Order or on October 1, 2006, whichever date is sooner.
- B. Not later than 90 days from the date of the Confirmatory Order, Mr. Abel will write an article for publication in the NRC's NMSS Newsletter that is mutually agreeable. The article will address the following elements: (1) that he was employed at a senior position at an irradiation facility, (2) how an individual should conduct themselves during an NRC inspection (e.g., the need for candor and forthrightness, the need to acknowledge violations forthrightly, if found, the potential consequences to an individual who does not provide complete and accurate information to the NRC, etc...), and (3) the importance of controlling SGI-M material. The NRC agrees that Mr. Abel's article will be published anonymously, and Mr. Abel will submit the article to an addressee which the NRC will provide.
- C. In light of Mr. Abel's agreement as described in Item 3, the NRC agrees not to take any further action against Mr. Abel regarding this matter.
- D. Mr. Abel understands that the NRC, as part of its normal process, will issue a press release with the Confirmatory Order. The NRC will provide Mr. Abel a copy of the press release prior to its release.

On September 16, 2006, Mr. Abel consented to issuing this Confirmatory Order with the commitments, as described in Section IV below. Mr. Abel further agreed in his September 16, 2006, consent and waiver that this Confirmatory Order is to be effective upon issuance and that he has waived his right to a hearing. Implementation of these commitments

will provide enhanced assurance that documents containing SGI-M will be appropriately protected and will resolve the NRC's concerns. I find that Mr. Abel's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Abel's commitments be confirmed by this Order. Based on the above and Mr. Abel's consent, this Confirmatory Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 147, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, and the Commission's June 6, 2003 Order, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Abel will not engage in future NRC or Agreement State licensed activities for a period of 1 year to begin on the date of this Confirmatory Order or on October 1, 2006 whichever date is sooner.
2. Not later than 90 days from the date of the Confirmatory Order, Mr. Abel will write an article for publication in the NRC's NMSS Newsletter that is mutually agreeable. The article will address the following elements: (1) that he was employed at a senior position at an irradiation facility, (2) how an individual should conduct themselves during an NRC inspection (e.g., the need for candor and forthrightness, the need to acknowledge violations forthrightly, if found, the

potential consequences to an individual who does not provide complete and accurate information to the NRC), and (3) the importance of controlling SGI-M material. The NRC agrees that Mr. Abel's article will be published anonymously, and Mr. Abel will submit the article to an addressee which the NRC will provide.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Abel of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Mr. Abel, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Abel. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by

means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 22nd day of September, 2006

Questions concerning this Confirmatory Order should be addressed to Mr. Michael Vasquez, NRC Region IV at 817-860-8121 or Mr. Michael Burrell, Office of Enforcement, who can be reached at 301-415-2740.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

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Sincerely,
/RA/
Cynthia A. Carpenter, Director
Office of Enforcement

Enclosure: As Stated

cc:

Mr. James Streicker
Mr. Terence Campbell
Cotsirilos, Tighe & Streicker, Ltd
33 North Dearborn Street, Suite 600
Chicago, Illinois 60602

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Attached List:

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